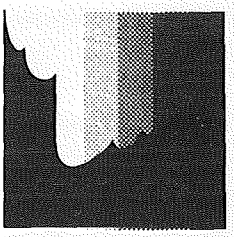

# PRINCIPLES FOR ENVIRONMENTAL IMPACT ASSESSMENT

A Canadian Environmental Law Association

White Paper

To the People of Ontario

And To Their Government

On Environmental Impact Assessment:

SUBMISSIONS CONCERNING THE
MINISTRY OF ENVIRONMENT
"GREEN PAPER"
ON ENVIRONMENTAL ASSESSMENT

October 1973

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# PART I

## SUMMARY OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION'S RECOMMENDATIONS ON ENVIRONMENTAL ASSESSMENT

The assessment of environmental damage before a project is undertaken, long just a noble goal, is at last being discussed seriously by the Ontario government as the object of legislation.

As one of the first jurisdictions in the world to consider implementation of environmental impact assessment legislation and at the same time (in its "Green Paper on Environmental Assessment of September 1973) to affirm the need for a high degree of public participation in the process, the Ontario government is to be congratulated.

However, for these very reasons, it is important that those who will follow Ontario's actions have, for a precedent, legislation which offers to the public the proper access to the assessment process. This will be the best means of ensuring that the quality of the environment will be stabilized and maintained.

## FUNDAMENTAL PRINCIPLES

There are several critical elements which must be present in any Environmental Assessment Procedure to ensure the achievement of its professed goal of protecting the environment:

1) THE LAW MUST REQUIRE SOCIAL AND ENVIRONMENTAL ASSESSMENT STUDIES AND COST-BENEFIT ANALYSES PRIOR TO PROJECT DEVELOPMENT APPROVAL FOR PROJECTS LIKELY TO HAVE SIGNIFICANT ENVIRONMENTAL IMPACT.

The law must clearly state that no matter what other approvals are obtained, no project likely to have such an effect may be started without an environmental assessment.

2) THE CREATION OF AN INDEPENDENT, POWERFUL ENVIRONMENTAL REVIEW BOARD IS A PREREQUISITE TO PUBLIC CONFIDENCE IN THE NEW PROCEDURES.

The powerful and independent review board, which would sit at all times, in essence like a court, would give clear substance to the often expressed view regarding the importance of environmental concerns. A mechanism which would still make the Board responsible to the elected representatives would also be available through the legislature.

3) ANY PERSON SHOULD BE ABLE TO REQUIRE THE BOARD TO CONSIDER WHETHER A PROPOSED PROJECT NEEDS AN ENVIRONMENTAL ASSESSMENT OR (IF AN ASSESSMENT HAS BEEN FILED) WHETHER IT ADEQUATELY EXPLAINS EXPECTED ENVIRONMENTAL EFFECTS.

The Green Paper has stated that there is a large grey area of projects where discretionary power must be exercised in determining the need for such a document. However, a discretionary screening mechanism that ignores the cumulative effect on the environment of many small projects would delude the public into thinking that pollution and environmental degradation are being stopped. In many instances, the public is the best defender of the public interest, and must therefore not be locked out of the review process.

4) PUBLIC ACCESS TO ALL INFORMATION ABOUT PROPOSED PROJECTS MUST BE GUARANTEED.

The public must have the right to have made available all the facts to which the project's proponent is party. Where industrial trade secrets or processes might be exposed, the Board should have the right, in closed session, to review this aspect of the information to determine whether or not it should be made public. Also, antiquated legislation must be amended so that civil servants may comment publicly on government and private projects without fear of jeapardizing their careers.

5) A FIRM TIMETABLE MUST BE ESTABLISHED FOR IMPLEMENTATION OF THE LEGISLATION IN BOTH THE PUBLIC AND PRIVATE SECTORS.

The dates for such a timed phase-in should be determined at public hearings, with basic phase periods appearing in the legislation, not in regulations. All projects, public or private, must be required to comply with this timetable where it is determined that they will have significant environmental impact.

Recently, a large Hamilton steel firm announced that it would be expanding its plant to increase steel output by 50 per cent. In a city where demands on air quality are already high, does the installation of the usual pollution control equipment constitute adequate protection for the city residents? A firm criterion is necessary to ensure that such projects will not be excluded from the legislation simply because plans to build were announced before the impact amendments come into effect.

6) PUBLIC OR PRIVATE FUNDS SHOULD BE AVAILABLE TO OBJECTORS ACTING IN THE PUBLIC INTEREST.

Objectors to a project are never on equal footing with its proponents in terms of financial resources. Provision must be made in the legislation to ensure that there are adequate resources -- either from the government or from the project proponent -- available for such purposes.

PROCEDURAL GUIDELINES

7) THE ENVIRONMENTAL ASSESSMENT DOCUMENT MUST CONTAIN ALL RESPONSIBLE CONTENTIONS OF INTERESTED OR AFFECTED PERSONS, OUTSIDE EXPERTS, ORGANIZATIONS AND GOVERNMENTAL AGENCIES ON THE POSSIBLE ENVIRONMENTAL AND SOCIAL IMPACTS OF A PROPOSED PROJECT.

The body of the document should discuss in detail feasible alternatives (including the alternative of doing nothing) even where such discussion falls beyond the scope of authority of the party responsible for the project. Also, a summary that the layman can understand should accompany the more technical assessment, so that the general public may comprehend the issues involved.

8) THE ORIGINATOR OR PROPONENT OF AN UNDERTAKING SHOULD PREPARE AND PAY FOR ITS ASSESSMENT.

In the case of a government project, the agency which has primary authority for committing the government to a course of action with significant environmental effect should be responsible for the preparation of the document. It is probable that, in the long run, agencies whose personnel have, in the past, reflected a narrow focus of concern would be required to supplement their staffs with persons of different backgrounds; or, alternatively, find means whereby their present staffs might acquire the relevant knowledge of, and attitude toward, environmental

issues. A new institutional viewpoint should thereby emerge which would be more sympathetic to environmental values.

A private developer would be responsible for his own project's assessment, but would be subject to the guidelines outlined for governmental agencies.

9) THE REVIEW BOARD, WORKING WITH THE MINISTRY OF THE ENVIRONMENT STAFF, SHOULD ASSURE THAT ALL STAGES OF THE ASSESSMENT PROCESS FOLLOW PROPER PROCEDURES.

Such an approach would mean that sufficient terms of reference would be prepared, technical adequacy of completed assessments reviewed and input from affected ministries, agencies and the public co-ordinated. Moreover, an added dimension of objectivity in preliminary preparations would be assured by the Board's presence.

10) EARLY NOTICE OF A PROPOSED PROJECT MUST REACH ALL THOSE INTERESTED AND LIKELY TO BE AFFECTED.

In order to alert any person who might wish to object to a proposed undertaking, notice should be given whenever a project proponent files his assessment document (or application for exemption from assessment) with the Board. Such notice would be given by publication in the Ontario Gazette, by advertising in local and provincial media, and by registered mail so as to reach all individuals and groups who are interested or likely to be affected.

CANADIAN BAR ASSOCIATION RESOLUTIONS, 1971 and 1973

RESOLUTION RECOMMENDING EFFECTIVE PUBLIC PARTICIPATION IN PROVINCIAL POLLUTION CONTROL
53rd Annual Meeting - Banff, 1971

WHEREAS the deteriorating quality of our physical environment has become, and is a matter of urgent national concern in Canada; and

WHEREAS it is desirable and necessary for the effective operation of pollution control laws in the various provinces of Canada that the participation and cooperation of an informed public in enforcement processes be sought and maintained.

THEREFORE BE IT RESOLVED THAT:

1. Provision should be made in provincial legislation for effective participation by individuals and groups through public hearings or other appropriate means in proceedings of environmental protection agencies relating to establishment of environmental quality standards and pollution permit terms and to the enforcement of such standards and terms once established.

2. Legislation should be enacted in the various provinces to permit private individuals, with the prior approval of the court, to maintain actions, without joining the Attorney-General and without proving damage different in kind or degree from that suffered by the community at large, for declaratory or other equitable relief against any person, corporation or government agency or department to secure protection of public rights in the healthful quality, recreational use, and freedom from pollution of air, water and land subject to the legislative jurisdiction of the province.

3. Private individuals and groups should, upon request, be accorded access to permits, licences, reports, rules, regulations, technical data and other information relating to the quality of the environment

that may be kept on file by any provincial agency responsible for environmental protection or natural resource management.

4. Provision should be made in provincial legislation to allow the provincial pollution control agency to initiate and maintain all forms of proceedings before the courts, including legal proceedings for injunctive or other relief.

5. Provision should be made in provincial legislation for a procedure whereby any person or persons may petition the pollution control agency or the responsible minister to investigate, set standards or take action to enforce the purpose and intent of the pollution control legislation, and the agency or minister shall either act and report to the petitioner or advise the petitioners in writing stating the reasons for denying the petition.

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONS
Key-note Resolution No. 3
55th Annual Meeting - Vancouver, 1973

RESOLVED

That the Canadian Bar Association supports public participation in the planning and approval of projects that have a significant environmental impact and in the enforcement of regulations designed to protect the environment and recommends that

(a) every project having a significant environmental impact be preceded by an environmental impact study, paid for by the proponent of the project and that this study and all other information obtained through public funds be made available to the public; and

(b) any individual or groups have the status to object to any such project and that upon such objection, a mandatory public hearing be held before any government approval or licence is granted; and

(c) any individual or groups, with the leave of the court, on his or their own behalf or on behalf of the public, have the status before all courts or administrative tribunals to review such project or enforce any governmental regulations without demonstrating a special interest or damage.

# PART II

## BACKGROUND

### ENVIRONMENTAL PLANNING AND CONTROL MECHANISMS

In the fields of conservation of natural resources and concern for the quality of the environment, long-range goals and workable comprehensive plans have too often been conspicuous by their absence. Yet the legal system in Ontario and in Canada can provide for scrutiny and constructive criticism of activities and projects having an adverse environmental impact before irreversible steps are taken, committing project planners to dubious undertakings.

This tool has been used, to a limited extent, at the municipal level for a considerable period of time. The Planning Act, for example, imposes a duty on planning boards and municipal councils to plan for the health and welfare of their constituents.[1]

But generally we look in vain for plans dealing with the use and conservation of our natural resources, including energy, air, and water. We have set up administrative agencies to license industries and municipalities to use and dispose of our natural resources; but we have not adopted legal limits on the extend of depletion which we will allow.

The closest we have come to planning for the future in Ontario are policies developed within a branch of the Ministry of the Environment for various provincial "watersheds".

Without comprehensive and legally binding plans, licensing of private polluters is hardly one step beyond unrestricted development.

What seems acceptable today may not be so five years from now. Without plans, government licensing agencies have no criteria with which to reject developments today, or to weigh their merits against future needs.

## THE ENVIRONMENTAL IMPACT STUDY

One important planning tool is the environmental impact study. Unfortunately, in only one federal statute,[2] and in no provincial statute,[3] can one find a requirement for the preparation of such a study, or a duty to act on it, when major public or private projects which may have environmentally damaging effects are being licenced.

The need for a project, its environmental impact, and alternatives to it are essential planning guideposts which are generally ignored by our current laws.

Some credit is due to a number of provincial statutes,[4] in that while they do not call for a full environmental impact assessment, they do require submission of data which, in some instances, might permit the reviewing authority to deduce the environmental effects, to some degree, before approval is given. However, these are fairly limited attempts at control, merely focusing on one or two activities (e.g. quarrying). They are not part of a larger, co-ordinated, long-range plan which has evaluated, for example, all known sources of sand and gravel and surveyed the various uses around them, so as to gauge and minimize the adverse effect on the environment of all man's activities.

Man's role in changing the face of the earth ranges from the obvious to the subtle -- from damming great rivers and planning cities around the automobile, to affecting the reproduction of hawks and pelicans through the use of pesticides and lacing fish with mercury. Because it would interfere with profits and short-term convenience, we have not looked too closely at the hidden costs of our decisions. In the Gulf of St. Lawrence, for example, the growing number of hydro-electric power dams we have built has exerted ususual and dangerous control over nature. Hans New, an engineer-scientist with the Bedford Institute near Halifax, has stated that by holding back the natural springtime flow of river water, the dams have altered the mixture of fresh and salt water in the Gulf. Nutrients have been reduced; the water temperature, marine life and climate have been changed. Although spring runoff is vital, it is now largely regulated for power-producing purposes.

Another example: Dofasco and Stelco may benefit the Hamilton area by employing many people, but what about the social costs of the increased rate of cancer and respiratory disease in that city? Who pays the cost of increased medical care? What price have be paid in so polluting Burlington Bay that it may never be clean again?

The extent to which the lives of industrial workers outside the plant are affected by the polluting activities of their employers may be dangerous and/or damaging as well. In a questionnaire prepared by the U.A.W. in 1970,[5] more than 17 per cent of the locals answering knew of instances when their members' lives had been directly affected by pollution caused by the plants at which they worked.

Moreover, other questions and answers revealed that additional members may have been affected by such out-of-plant pollution. When asked if emissions from company smokestacks caused damage to employees' cars parked in company or commercial lots during working hours, 33 per cent of all locals reporting indicated "yes", and in the large locals ill effects were reported in 55 per cent of the cases.[6]

Now, at the eleventh hour, we are just beginning to consider the cost-benefit analyses which take into account environmental and social damage.

We should have a recognized right in Ontario to ensure that this cost-benefit analysis takes place. We should have mechanisms whereby both industry and government can be forced to scrutinize their plans and made to consider alternatives less costly socially and environmentally.

Until Ontarians have a legal right to environmental impact studies, government and industry will, in most instances, continue to employ a narrow cost-benefit analysis, such as was the case, for example, with the B.C. Hydro-Bennett Dam Project, which left out the cost of damage to valleys and forests from flooding and gradual accumulations of silt, changes in climate, water temperature and outbreaks of epidemics by pest organisms, and looked only at the benefit of increased availability of power for export and domestic use.

The environmental consequences of building more and more fossil fuel and nuclear power plants -- with their concomitant dangers of thermal and radiation pollution --

demand a broader, more comprehensive and diversified assessment of goals and values at the initial stages of planning.

Before such projects as Ontario Hydro's recently proposed 2,000,000-kilowatt generating station for one of five sites in Northeastern Ontario are approved -- one proposed site near Sudbury would necessitate the building of a nuclear power plant because of the already heavy demands put upon air quality in that area -- a cross-sectioned evaluation of the proposal's environmental impact must be made, to determine whether such a project can be deemed to be truly in the public interest.

In Ontario the citizenry, whose interests might be broader than the narrow costs and benefits weighed by agency and industry personnel, are presently locked out of the decision-making process. We do not even have a right to know the impact of a project, much less to assess or reject it. If we were to obtain a legal right for any citizen to invoke a procedure that forces government and industry to evaluate openly and accept responsibility for the trade-offs, we shall have accomplished a great deal.

## THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

In 1969 the United States Congress passed the National Environmental Policy Act (NEPA). Its purpose is "to declare a national policy which will encourage and produce an enjoyable harmony between man and his environment." Its cornerstone is the environmental impact study.

Supporters of NEPA in its formative stages remembered a disastrous oil blowout in early 1969 from offshore wells

operating under Interior Department leases in the Santa Barbara Channel in California. Remembering the assurances given by the federal government before the blowout that environmental factors had been considered and precautions taken, they demanded some "action-forcing mechanism" within the Act, to ensure that the government agencies would not ignore the Act's high-sounding purposes. The "action-forcing" mechanism they agreed upon was the environmental impact study. Section 102(2)(C) provides that any agency of the United States federal government proposing legislation or planning to undertake an action "significantly affecting the quality of the human environment" must file an impact statement with the Council on Environmental Quality. The agency must:

> ...include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on
> (i) the environmental impact of the proposed action,
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
> (iii) alternatives to the proposed action,
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

In addition, copies of the statement and the comments and views of appropriate federal and state agencies and officials must be made available to the public, as

provided by statute.

The overall effect of the Act is to require federal agencies to consider environmental factors at the earliest possible stage, and to mould their actions to improve the environmental effects, or to refrain from action when the balance of the information available indicates that the action is not in the public interest. The impact study is the means of getting all this information together, so that it will be available to the public and officialdom alike.

The information revealed by impact studies has caused the abandonment or modification of many projects discovered to be inadequate when held up to intense scrutiny.

Changes in individual projects, however, are only a partial index of NEPA's impact. Perhaps more important is the profound effect on agencies' policies on a number of levels.

The U.S. Council on Environmental Quality, in its third annual report, noted:

> The far-reaching result is that agencies whose statutory mandates previously did not call for attention to the environmental effects of their actions are now required to take those effects into account. And agencies whose mandates previously directed their attention only to certain facets of the environment now have a responsibility as broad as the environmental policy declared in NEPA.[8]

This process of requiring a public explanation of the environmental consequences of proposed government actions has compelled many agencies to adjust substantially the ways they do business. The U.S. Atomic Energy Commission, for instance, which previously considered only the

radiological health and safety effects of nuclear power plants, now must consider all other significant environmental effects as well, such as the rise in water temperatures caused by the thermal discharges from plants.[9]

In the U.S., the environmental impact study has opened many government activities to public scrutiny and participation for the first time, has forced agencies to broaden their narrow focus, has provided a systematic way for the government to deal with complex problems that cut across the responsibilities of several agencies, and has opened the way to review of administrative agencies' decisions.

Such a process is long overdue in Ontario. Nonetheless, its apparent if belated arrival in the context of a policy discussion in the government's Green Paper is much to be commended.

# PART III

## DISCUSSION OF AND RESPONSE TO MINISTRY OF ENVIRONMENT GREEN PAPER ON ENVIRONMENTAL ASSESSMENT

(1) WHAT KINDS OF UNDERTAKINGS REQUIRE ENVIRONMENTAL ASSESSMENTS?

ANY PROJECT WITH "SIGNIFICANT ENVIRONMENTAL IMPACT" SHOULD BE SUBJECT TO ASSESSMENT PROCEDURES, except where a statute specifically provides an exemption.

This criterion should be construed to include a project having an important or meaningful effect, direct or indirect, upon a broad range of aspects of the human environment. The cumulative impact with other projects must be considered. Without limiting the generality of the above, any action that may substantially degrade or detrimentally change the depth, course or quality of streams, plant and wildlife habitats, land and other resource uses, air or levels of noise must be deemed to require a full examination of its undesirable and unintended consequences.

IT SHOULD BE OPEN TO CONCERNED CITIZENS AND GROUPS TO INVOKE A PROCEDURE THAT WOULD REQUIRE THE REVIEW BOARD TO DETERMINE IN PUBLIC WHETHER AN ENVIRONMENTAL ASSESSMENT DOCUMENT IS REQUIRED, WHEN THE EXEMPTION OF A PROJECT FROM COMPLIANCE IS CONTEMPLATED BY EITHER A PROJECT PROPONENT OR THE SCREENING BODY.

Specific criteria which could provide a workable vehicle for defining when projects are deemed to have "significant environmental effect" and therefore require

an assessment, should include such factors as: area (in acres) affected; monetary value of project; expected irretrievable resource use; substantial population displacement; proximity to and effect on public park lands; etc.

Where projects must obtain permits or certificates of approval for the use of the natural environment, either as a source of raw materials or as a waste receptor, the proponent must have available and make public:

(a) characteristics of the proposed area, and whether any studies of best desired use have been done
(b) prediction of greatest negative environmental impact new activity could bring about

If objections are raised as to the adequacy of this information, then an assessment and hearing are necessary.

Secondly, where there is no zoning by-law applicable (this would include where an Official Plan exists but no implementing by-law has been passed, or where a project or work is to be added to what already constitutes a non-conforming use) then an assessment and hearing should also be mandatory, except where no objections are raised.

Thirdly, where no emissions or discharges are involved, but the project will or "is likely to impair the quality of the natural environment for any use that can be made of it," (E.P.A.sect.14) an assessment and hearing should also be mandatory, unless there are no objections raised.

A number of the other general criteria, as set out in section 14 of the E.P.A., provide valuable indices for activities that should require an assessment. That is, section 14 could be amended to mandate assessment of a

project, work, or undertaking that

(a) causes or is likely to cause impairment of the quality of the natural environment for any use that can be made of it;
(b) causes or is likely to cause injury or damage to property or to plant or animal life;
(c) causes or is likely to cause harm or material discomfort to any person;
(d) adversely affects or is likely to adversely affect the health of any person;
(e) impairs or is likely to impair the safety of any person; or
(f) renders or is likely to render any property or plant or animal life unfit for use by man.

The Pits and Quarries Control Act[10] provides some other valuable indices. For example, in accordance with section 6(1) of that Act, an assessment could be required for any project that would affect:

(a) the preservation of the character of the environment;
(b) the availability of the natural environment for the enjoyment of the public;
(c) the traffic density on local roads;
(d) the water table or surface drainage patterns;
(e) the nature and location or other land uses in the area;
(f) the character and size of nearby communities.

As noted in the Green Paper, projects that are likely to result in significant "direct physical damage" are the easiest to decide to subject to an environmental assessment. Highway widenings or extensions, channelization of streams, construction of fossil fuel or nuclear plants and of airports are obvious examples of activities that are likely to substantially degrade or curtail former uses of the environment. Resulting increases in noise and traffic levels, destruction and/or alteration of wildlife

habitats and residential areas or changes in water quality that affect fish or fish eggs are easily deduced effects from such visible causes.

The problem, however, is to guard against governmental and private undertakings that might be so fragmented that each alone could not be considered significant. The cumulative effect of projects in the so-called "gray area" see page 10 of the Green Paper) is by no means insignificant.

This is the danger of a discretionary screening mechanism (page 10) with no meaningful procedure for appeal.

If regulations (page 11) provide for exemption of particular or whole classes of projects from the environmental assessment requirement because they are individually small (in terms of monetary value of project, area affected, nature of emissions produced, etc.) then the high-sounding protection of the forthcoming amendments will be illusory. For example, each segment of a highway project must be viewed as an integrated part of the whole long-range scheme, and the cost (monetarily and environmentally) of the entire project is the relevant figure from which to determine whether it is necessary to prepare an environmental assessment document.

Small actions must be considered significant when their effect is cumulative. An assessment of the total environmental impact should not be avoided by subdividing a project into numerous small parts, no one of which is substantial.

In this regard, it should be open to a concerned citizen or citizens to invoke a procedure that would re-

quire the Review Board to consider, in a public forum, the requirement of an environmental assessment document, when project proponents are applying for approval, or when they refuse to apply for approval. The Review Board could also hear appeals from a decision by the screening mechanism not to require an environmental assessment document.

No attempt, in this event, should be made to measure a project's effect by scale; rather, there should be a presumption that actions provoking objections are significant. To guard against abuse of this procedure, the Review Board should have the power to dismiss objections when they are clearly frivolous. Certainly, the Board might consider such factors as the number of objections and their quality and substance before making a determination. The general question of standing and Board powers will be discussed in more detail in later sections.

The use of pre-identified factors in regulations should, of course, be used for facilitation of most administrative considerations. But the above minimum criteria should be legislated in the statute to ensure that review by the Board is possible for what would otherwise be routine regulatory decisions.

A word should also be said about projects with a mixture of detrimental and beneficial effects. It is arguable, for example, that a sewage treatment plant is environmentally beneficial and should therefore require no assessment. On the other hand, location of the treatment facility at a particular site (such as near a residential area or public park) might be detrimental to the local area in terms of odor or visual presence or noise, and

because the physical changes on the site involve an irretrievable land use commitment.

Environmental systems are sufficiently complex that an apparently beneficial activity may have connected, but not readily apparent, adverse effects. The above situation should, on balance, certainly require review.

In other types of activities, such as a governmental decision that only fuel of a two per cent sulphur content be burned in government-owned furnaces (where the alternative exists of burning fuel with no sulphur content) it is possible that the degree of environmental improvement could logically be aided by an assessment document.

However, the benefits that would accrue from assessing the degree of improvement must be weighed against the administrative hardships and environmental damage that would result from delays during the review. When an environmental improvement is sorely needed and obviously beneficial, protracted impact assessment should be avoided.

Effects of substantial governmental activities which are not in themselves physical alterations should also receive attention, particularly in light of the Green Paper's announcement (page 12) that "the Ontario government favors the proposal that environmental assessment should commence with the projects of its ministries and agencies." The potential environmental effects from governmental contracting and procurement power are limitless, and should not be discounted. For example, the purchase of fuel coal produced by strip mining could be reviewed. Purchasing eight-cylinder automobiles or paper that cannot be recycled might be the subject of an assessment as well. Here, a

quantitative (i.e. monetary) threshold would be appropriate to prevent an absurd application of the assessment requirement.

In any event, the amendments should state clearly that any project with "significant environmental impact", whether private or governmental, must comply with the procedures. This would not be inconsistent with a timetable (as suggested on page 12 of the Green Paper) providing for a phase-in of the application of the assessment procedure first to governmental and then to private projects.

The dates for such a timetable phase-in should be determined at public hearings, with basic phase periods appearing in the Act. The Act should also state that, notwithstanding a phase-in period exemption, the Board would have an "emergency" power to require any project which appeared to involve a potentially significant effect on the environment to be subject to the procedures.

(2) APPLICATION TO PROJECTS COMMENCED PRIOR TO ENACTMENT OF ENVIRONMENTAL ASSESSMENT REQUIREMENT

Recommendations:

A PROJECT COMMENCED PRIOR TO THE IMPLEMENTATION DATE OF THE ENVIRONMENTAL ASSESSMENT AMENDMENT WILL STILL BE SUBJECT TO THE ASSESSMENT REQUIREMENT UNLESS IT HAS REACHED SUCH A STAGE OF COMPLETION THAT THERE CAN BE NO DOUBT THAT THE COST OF ALTERING OR ABANDONING THE PROJECT WOULD OUTWEIGH WHATEVER BENEFITS MIGHT ACCRUE FROM COMPLIANCE WITH THE PROCEDURE.

A test for this determination would be a comparison of all steps taken toward completion of the project with

those steps yet to be taken.

Alternatively:

Where a project's necessary plans, specifications or estimates have been submitted to the appropriate agency but approval has not been received before the coming into force of the environmental assessment amendment, that project, if it has potentially significant environmental effect, shall be required to comply with the Act.

The Green Paper too easily skirts the issue of applying procedures to projects commenced or announced prior to enactment of the environmental assessment requirement. Decisions in such cases ought to be based upon the project's stage of development and its potential for significant environmental effect. The amount of work still to be done ( measured in planning, time, resources, expenditures, etc.) should be weighed against the work already done,measured by the same considerations.

The minimum threshold for retroactive application of the assessment procedure, consistent with an expressed concern for the environment, would be no previous agency approval of a project's plans, specifications or estimates, even though such items were submitted before the Act came into force. For example, in regard to a highway project where the necessary plans, specifications and estimates have not yet been approved and construction contracts not yet awarded, it would be proper to halt further activity on the project until the environmental assessment requirements are met.

(3) WHAT SHOULD THE ENVIRONMENTAL ASSESSMENT DOCUMENT CONTAIN?

THE ENVIRONMENTAL ASSESSMENT DOCUMENT MUST CONTAIN ALL RESPONSIBLE CONTENTIONS OF INTERESTED OR AFFECTED PERSONS, OUTSIDE EXPERTS, ORGANIZATIONS AND GOVERNMNETAL AGENCIES ON THE POSSIBLE ENVIRONMENTAL AND SOCIAL IMPACTS OF A PROPOSED PROJECT.

The party preparing the assessment must include in the document all responsible contentions and opinions of outside experts, concerned public or private organizations or individuals who bring possible environmental impacts of the proposed action to the party's attention. Any comments or suggestions from other agencies in the government who might have special expertise in, or legal jurisdiction over, the subject matter of the proposed project must also accompany the final assessment document.

It should be clearly stated in any amendments that evaluation must extend beyond solely physical consequences, so as to require interdisciplinary approaches utilizing the natural and social sciences.

This is noted at page 8 of the Green Paper, and we expect that this commits the government to that solid airing of both primary and secondary effects of projects as is indicated there.

Discussion and evaluation of alternatives must also be included in the environmental assessment.

For example, Ontario Hydro, in the course of a preliminary decision to build a nuclear power plant, should consider the following alternatives. Are there other, perhaps better, sites in the same general area? Would changes in the design of the plant be desirable? Would a decision to build a fossil fuel plant instead leave the locality

better off environmentally? If so, should not Hydro consider the environmental disadvantages of oil spills or strip mining where the fuel is produced? Should it not consider whether it would be preferable to provide power by transmission from other areas, or even whether the community should do without the additional power capacity because of the increased land development pressures likely to arise, were such additional power available?

It is obvious from the above discussion that alternatives must be explored which, in many instances, fall beyond the scope of authority of the party responsible for the project's evaluation. But only such a comprehensive and long-range approach can do justice to environmental concerns.

In soliciting and recording outside comments, the proponent should respond to such comments in the body of the document. If it is charged that a certain environmental damage is threatened by a given project, the assessment document must either explain why the proponent discounts the threat, or why the benefits of the proposed project are likely to outweigh the dangers.

A challenge could therefore be based on either the failure to discuss one or more practical alternatives, or the failure to provide adequate detail in support of a reasoned choice among alternatives.

Accompanying the assessment document should be a summary which makes the issues involved understandable by the layman.

For more suggestions as to the contents of an environmental assessment document, see the report of the Environment Canada Task Force in Appendix A.

(4) WHO PREPARES AND REVIEWS THE ENVIRONMENTAL ASSESSMENT DOCUMENT?

THE ORIGINATOR OR PROPONENT OF AN UNDERTAKING SHOULD PREPARE AND PAY FOR ITS ASSESSMENT.
THE REVIEW BOARD, WORKING WITH THE MINISTRY OF THE ENVIRONMENT STAFF, SHOULD ASSURE THAT ALL STAGES OF THE ASSESSMENT PROCESS FOLLOW PROPER PROCEDURES.

The originator or proponent of an undertaking -- in the case of a government project, the agency which has primary authority for committing the government to a course of action with significant environmental effects -- is the best candidate for preparation of an assessment document.

As has been noted elsewhere,[11] government agencies have a tendency to be totally absorbed in the agency's special mission or with its special constituencies.

However, if the preparation of environmental assessment documents was to be made the proponent agency's responsibility, then, in the long run, agencies whose personnel have, in the past, reflected a narrow focus of concerns would now be required to supplement their staffs with persons of different backgrounds relevant to environmental issues. The "interdisciplinary approach" necessary to implement the government's suggestions as to a proper assessment document (see Green Paper pages 15-17) would mean that personnel must be hired who bring not only new skills but a fresh viewpoint into the agencies. Over time, this influx should lead to sharper questioning of traditional assumptions within the agencies of all ministries. Out of it should emerge an institutional viewpoint more sympathetic to environmental values.

Realistically, there is the possibility of a natural but unfortunate agency tendency to permit the writing of assessment documents to become a form of bureaucratic gamesmanship, in which newly acquired expertise is devoted not so much to formulating a project that meets the needs of the environment, as to shaping an assessment document to meet the contours of the agency's pre-conceived program and to withstand the test of review.

However, the opportunity not only for Ministry of the Environment staff and Review Board members, but for members of the public to make objections to inadequate documents suggests that evasive or obfuscating assessments will be thoroughly criticized, and decisions on projects postponed until sufficiently objective assessments are submitted.

If a separate body is necessary to assure that terms of reference are sufficient, completed assessments are technically adequate, and input from affected ministries, agencies and the public co-ordinated, then the Ministry of Environment staff, working in conjunction with the decision-making Board, could competently provide this function.

The scenario for the process should follow roughly this pattern: The project proponent would prepare the assessment with the assistance, if necessary, of outside consultants. Ministry of Environment guidelines and co-ordination of other agency and public input would be available, but the Review Board would have legal and procedural overview powers.

Ministry of Environment staff would scrutinize the preliminary draft, and would inform the proponent of its

criticisms. At this level, the proponent could modify the statement at its option.

The statement would next come before the Review Board, along with written criticisms and comments from the Ministry of Environment.

The Review Board can accept or reject the adequacy of the statement; if it is deficient, the hearing can be postponed until a proper assessment is submitted. (See page 32 of the Green Paper.)

This process might require preliminary hearings by a committee set up by the Board for this purpose one or two days a month, to judge the adequacy of assessments.

Involving the Board at this early stage would assure that proper notice of preliminary agency consideration of proposed projects would reach and alert interested and affected groups.

Such a process would also expedite the Board's later evaluation of the assessment for completeness of opposing and outside views.

This would, therefore, not involve unnecessary duplication of Ministry of Environment technical staff, but rather result in an added dimension of objectivity (i.e. the Board's early presence) as well as a pooling of human resources, and consistent methodologies at an early stage for thorough consideration of parameters of concern. (For example, if the board was involved in the initial process, it could direct an agency to give early notice of project proposals, and direct it to provide for preliminary public input.)

## (5) WHO MAKES THE DECISION IN THE ENVIRONMENTAL ASSESSMENT SYSTEM?

### THE CREATION OF AN INDEPENDENT, POWERFUL ENVIRONMENTAL REVIEW BOARD IS A PREREQUISITE TO PUBLIC CONFIDENCE IN THE NEW PROCEDURES.

CELA supports the creation of an independent environmental hearing board or commission with judicial or quasi-judicial powers.

Special "courts of record" have been set up before to deal with highly dangerous or disruptive conditions and activities. The rationale behind special criminal and family courts, for example, is that criminal activity and family break-ups are sufficiently disruptive of the social fabric as to require unique institutions with special sensitivity and expertise for dealing with them.

A year-and-a-half-long study on environmental assessment, culminating in Minister Auld's September 27, 1973 statement that "development, whether governmental or private, can have a significant effect -- for better or worse -- on the quality of life for the citizens of this Province", is a clear signal that the government regards environmental and ecological disruption as an equally menacing process of the first magnitude.

A recent decision of the Ontario Environmental Appeal Board confirms this view.[12] The Board in that decision noted:

> There is no doubt that the handling of the environment is going to require a great many more legal innovations to shape and integrate forums and regulatory bodies into our new-found environmental concerns, and where they may be given concrete reality.

In Sweden, such a body already exists. It is the National Franchise Board for Environment Protection, and it is similar in construction to a court of law. It deals with applications by industry and local authorities for permits under the Environment Protection Act. The board consist of a president with legal training, a technical expert, a representative of conservation interests, and one member with either industrial or municipal experience depending on the case.[13]

CELA's conception of the qualities, duties and powers of this new body are the following:

(a) The Board should be a "non-partisan, independent body without vested interests... To confirm its independence and disinterest, the Board would have none of the regulatory, administrative or other routine responsibilities of a department of government, nor should it in any way be part of any department.[14]

(b) As an illustration of how the Board should be seen to be non-partisan, each of the three political parties could have the right to appoint one third of the board members.

(c) Members would be appointed for a fixed term, 3 to 5 years as a minimum, with guaranteed tenure and salary.

(d) The Board should be constituted so that it is a "court of record" and would fall within the qualifications for review and appeal as set out in The Statutory Powers Procedure Act[15] and/or The Judicial Review Procedure Act.[16] This would usually involve only a question or wrong decision in point of law.

(e) The Board would have all the powers, rights and

privileges as are vested in tribunals under the Statutory Powers Procedure Act insofar as the conduct of its hearings and the attendance of witnesses are concerned (e.g. power of subpoena, power to take evidence under oath or not).

(f) The statute creating the Board should provide for a quorum and for a decision by the majority of the quorum.

(g) There should be assurance that decisions of the Board are made only by those members who heard the evidence and argument of the parties, and, except with the consent of the parties, no decision of the Board should be given unless all members so present participate in the decision.

(h) There should be guaranteed protection for civil servants called to testify; that is, besides the sections (11 and 14) of the S.P.P. Act which provide for general protection of witnesses at hearings, amendments must be made to the Public Service Act so that a civil servant is given safeguards that he will not be dismissed, or relegated in status on his job by his superiors, as a result of any evidence he may give at a hearing.

(i) The Minister of the Environment, the Attorney General, or other governmental unit, any person or any corporation or association resident in the Province shall have power to institute proceedings before the Board when the exemption of a controversial project from environmental assessment is contemplated.

(j) The above parties, when given notice of the filing of an assessment document (through Ontario Gazette and general advertisement -- see section on access to information for more detail) may file an objection to the

project and document with the Board, and public hearings shall be called, except if the Board, after a preliminary hearing, finds the objection to be frivolous.

(k) The Board would have power to (1) grant a final certificate of approval for the project and the environmental assessment document, (2) grant approval, subject to terms, conditions or modifications, (3) reject the application if the environmental assessment discloses sufficient environmental negatives, subject of course to the above appeal procedure.

(l) At or prior to the public hearings, if sufficient environmental negatives are disclosed, an objector could challenge not only the adequacy of the environmental assessment, but the necessity of the project or development as well.

(m) Provisions for charging limited costs if complaints or objections are clearly frivolous should be granted to the Board as well.

(n) A summary of the environmental assessment document should be available in language that a layman can understand. The responsibility for this would lie with the project proponent, subject to Board overview.

(o) Decisions of the Board should be published.

(p) In addition to the ability to prosecute for failure to comply with the Act, any person may require the Board to issue a "cease and desist" order enjoining project developers (including the Crown) from proceeding without first complying with the assessment procedures and receiving approval from the Board to proceed.

The purpose of including these points in the assess-

ment process is to shift the burden of proof to the project proponent, to prove that his proposal will not unduly impair the quality of the environment.

## (6) WHY NONE OF THE GREEN PAPER'S FORMULAE ARE COMPLETELY ACCEPTABLE

In response to criticisms of this approach such as are attempted in the Green Paper (pages 34-35 and 45, regarding an independent body allegedly unaccountable to the Legislature, some remarks are here in order.

First, there are important reasons why, in major environmental decisions, such a board ought to be free of political rhetoric and pressure from special entrenched constituencies. Observation of the way in which government (i.e. Cabinet) handles, for example, provincial parks reveals that they often fall victim to expediency. Yet environmental decisions cannot wait four years to be rectified by a new government. Once made, they are often irreversible.

The statement (pages 34-35) concerning the possibilities of "government policy" being misinterpreted and altered over time by an appointed body is irrelevant in a legal context. In a court of law, as well as in a tribunal, there is only one standard, a legal standard, that should be applicable.

In the alternative, however, if the government and the public still find the basic premise of the board and appeal through judicial channels potentially repugnant to a system of accountability to the elected representatives, then the answer is not to reserve final decision to the

Cabinet (as suggested in the other three "model systems") but rather to have either the tribunal or the appeal body remand the matter to the Legislature.

If such matters are finally a mixture of conflicting policies and politics, then they deserve a full airing in the legislative halls where they were initially hammered out as general principles. While the government is the majority in the legislature it is not the whole legislature, and should not cloak or posit one party's or government's position as legislative will (viz. page 40).

The argument that suggests that the Legislature could not possibly deal effectively or meaningfully with all the potential remands it might receive on environmental matters (on top of its other, more general and diverse duties) is equally applicable to the Cabinet.

If, as is likely, this process of "final appeal to an elected body" will mean that only the most important cases involving substantive policy are brought before "elected representatives", then the full Legislature can do the job just as competently and legally as the Cabinet.

It is also open to question whether such a tribunal as is contemplated above is a usurper of public policy-making, or whether it serves, as some have suggested, as a catalyst to help assure that public policy is made by the appropriate entity. Such a body as is called for here can serve to gather and feed useful information back into the legislative policy process, which must be continuous if it is to be rational.

In response to the quotations from the Select Committee on the Ontario Municipal Board (pages 34-35) on the

narrowness of tribunal perspective, we should like to close this section with some equally compelling quotations with a different conclusion:

> Nothing in such a case suggests that the court [or tribunal] should usurp the legislative role in formulating ... policy. At most, it asks one of two things: (1) The court should test the existing ... plan against policies already articulated (more or less specifically in the law) and withhold approval of a proposal that is at odds with the policy or raises serious doubts about its effectuation. Or (2), if the court finds the proposal at odds with an environmentally sound policy, though it may not now be expressed in any legislation, and it finds no urgency for immediate construction, it withholds approval until and unless the policy question is returned to the legislative forum for open and decisive action.... The court can help to promote open and decisive action in the legislative forum in several ways. By enjoining conduct on the part of government or industry, it can thrust upon those interests with the best access to the legislature the burden of obtaining legislative action. ... The court serves either to implement an existing legislative policy against administrative disregard or to withhold irrevocable action until a policy can be considered and adequately formulated for action. To be sure, judges must make some tentative judgment about what the policy is, or should be -- but the important reservation is the word "tentative." It is a judgment that is subject to -- indeed, that encourages -- legislative consideration, not one which displaces legislative consideration. Rather than being at odds with legislative policy-making, the courts are promoting that process and at most -- prodding it to operate with open consideration of important issues, and with an alerted public.
>
> ... The decisions which comprise the great bulk of environmental lawsuits are <u>not</u> decisions articulated by legislatures, but almost always decisions by administrators, usually at a rather low level in the

> hierarchy, employing their own discretion from their perspectives in the presence of vague and sometimes contradictory statutory policies. For this reason, paradoxical though it may seem, judicial intervention, rather than posing the threat of undermining the legislative function, actually operates to enhance it.[17]

## (7) FACTORS AFFECTING PUBLIC INVOLVEMENT

### (A) Costs in Preparation for Hearings

The need for money to help defray the costs of obtaining adequate legal and scientific expertise in preparation for a hearing should be provided for in proposed legislation, by a provision mandating funding either by the project proponent (if private) or by a government fund (Legal Aid?).

This would enable citizens appearing at environmental impact assessment hearings to place themselves on a footing more equal to project proponents, who, in the case of major projects, may have expended hundreds of thousands, if not millions, of dollars in preparation for their environmental assessment documents and applications.

One possible way of cutting such citizens' costs would be to mandate that, since government experts (civil servant or scientist) are government employees, their knowledge is in the public domain and should be available to all without charge, e.g. as expert witnesses for opponents.

The Legal Aid Act and regulations should be amended to allow citizens willing to act in public interest envir-

onmental situations to receive assistance to enable them to be adequately represented before hearing bodies, either where they are likely to suffer special harm from a proposed project, or where they are acting in the public interest.

(B) Access to Information in Preparation for Hearings

CELA recommends that section 87 of the Environmental Protection Act be amended so that it provides that, except as to information that regards an industry's trade secrets and is not otherwise ascertainable, every provincial officer shall make available to any interested person at any reasonable time any indentified record in its possession.

It would obviously be insufficient for an opponent of a proposed project to have available only the draft and/or final assessment document. It is absolutely crucial to discover the reports, figures, inquiries, data, surveys, etc. which underly any conclusions drawn by the proponent.

A system of public inspection of records, etc., as provided for in the Corporations Information Act,[18] would be productive and useful. And a system similar to the one provided for by the Corporations Information Act or the Regulations Act, with reference to production at hearings (those statutes refer to courts),[19] would also aid inquiry. The Municipal Act,[20] with its procedure whereby a citizen can take action to obtain a report or document, also offers a useful precedent to the Environmental Protection Act. Other jurisdictions[21] have legislation which defines the citizen's right to government information, and may be of use in the present context as well.

In camera inspection of all documents should be a right of the Board, including trade secrets and land prices.

Without such revisions in the law, the proposed public hearing procedure for assessing the environmental effects of a potential project will be tokenism, and are likely to provide nothing more than a platform for ventilating emotions. The hearings cannot be regarded as the very end of the process where decisions are, in reality, already made (as in the case of the Pickering Airport). Without solid information, the layman's arguments can easily be shot down by the proponent, who has already done his thinking and mapped out his plans.

Opponents of projects, as well as the Board, should know with some certainty not only what documentary and oral assertions support or detract from a proponent's position, but also what he inferred from those assertions, and why he concluded as he did. In this regard, they should have access to inter- and intra-agency memoranda. (See also the discussion (pages 25-27) of what the environmental assessment document should contain.)

If necessary, it should be open to an opponent to conduct an examination for discovery -- of the proponent and all who contributed to the proponent's position -- if the Board concludes that the records and other information furnished by the proponent are inadequate.

(C) Notice

Provisions for notice given by the project proponent of the availability of these documents and information must be legislated, to ensure publication in the Ontario Gazette, general advertising media, or mail (i.e. notification by registered mail) so as to reach all groups and individuals who are interested and/or likely to be affected.

(D) Standing

CELA recommends that any person should have the power to institute proceedings before the hearing board for the protection of air, land and water in the Province of Ontario from proposed projects that may cause pollution, impairment or destruction. The subject of these proceedings should be either

1) the necessity of a project proponent's preparing an environmental assessment document before proceeding with the project, or
2) if the proponent has filed an assessment document with the Board, the completeness of that document, and/or the necessity of the project itself.

The definition of "person" should be drafted so as to include any individual or individuals, organizations, corporations, and governmental units.

Environmental problems in the twentieth century are unique in that there is, generally, no one injured or potentially injured party. Almost by definition, a project which harms the environment injures, to some extent, all

members of the public at large. But the fact that everybody, rather than someone in particular, may suffer harm from a proposed project should not preclude review of that project.

The mass-production characteristic of many modern legal wrongs and claims of wrong is reflected in the array of administrative regulations and agencies that are found in today's legal world. Elimination of standing requirements would be an enlightened response to such problems.

Environmental harms or potential harms should constitute injuries or potential injuries such that any member of the general public should be able to assert, before the Review Board, the interests of the community at large.

At present, any citizen can prosecute another for an alleged violation of the criminal law, and any ratepayer can restrain by an injunction the breach of a municipal by-law. Extending this right to the field of environmental assessment would not submerge the Review Board under an uncontrollable deluge.

In a different context, the Michgan Environmental Protection Act,[22] which includes broad provisions for standing, has been examined, and it was found that:

> Despite a much-invoked fear that enactment of the EPA would flood the courts with suits, only 36 cases have been filed in 16 months, and they have been evenly distributed over that period, with 2 or 3 in each month. The modest number of cases filed is neither cause for joy nor for gloom. It implies that both the proponents and opponents of the Act were wrong; the statute is not as easily accessible a tool as its supporters had hoped or its opponents had feared.[23]

It is also submitted that such a general provision should be applied, as well, in so-called "public nuisance" actions (for on-going pollution activities) where the intervention or permission of the Attorney General would no longer be necessary.

## PART IV

## CONCLUSION

The Environmental Impact Assessment Process, viewed from the perspective of those jurisdictions who will follow Ontario's lead, should be seen to be legislation that an enlightened government, attuned to the public interest, would adopt.

The assurance that responsible public participation will not only be tolerated, but encouraged, and regarded as a right and not merely a dispensation of government, would be the most positive expression of an enlightened approach. If a government is serious in encouraging such an approach, then it cannot fail to make public involvement a central feature in the decision-making process.

Moreover, the government should not fail to ensure that the public will be continuously informed of those factors which it finds to be influencing its preferences as to the nature of the forthcoming legislation. Proposed legislation should not be a public surprise.

In keeping with this spirit, the government should publish a list of those individuals, groups, corporations, industries, agencies and ministries which make submissions in response to the Green Paper.

It might also be appropriate for the government to prepare a graph showing the number of times a particular point is reiterated, and from which category of responder the point originated.

The government might even provide a public forum to facilitate a better understanding and clarification of issues and suggestions, problems and remedies.

In any event, public input and other suggestions made in this paper can, we hope, contribute to a final end to the vulgarization of the environment.

NOTES

1. The Planning Act R.S.O. 1970 c.349 s.33(4) as amended by 1971 c.2 and 1972 c.118.

2. The Northern Inland Waters Act R.S.C. 1970 c.28 (1st Supp.) is the one federal statute that provides for environmental impact studies. It applies only to water use in the North West Territories and the Yukon.

3. As of May 1973.

4. E.g. Pits and Quarries Control Act S.O. 1971 c.96.

5. The questionnaire was completed by 430 U.A.W. locals, the bulk of which (152) are located in Michigan. The next largest geographical grouping (69 locals) was Canadian. The results of the questionnaires and elaborate testimony was presented to the U.S. House Education and Labor Committee. Hearings on H.R. 843; 3809; 4294; and 13373 before the Select Subcommittee on Labor of the House Committee on Education and Labor, 91st Congress, 1st Session, part 2 at 1179-217, 1233-307, 1484-86.

6. Ibid.

7. Public Law 91-190 (January 1, 1970); 42 U.S. C 4321-4347.

8. Environmental Quality, Third Annual Report of the Council on Environmental Quality, August 1972, p.225.

9. 37 Fed. Reg. 9779 (May 17, 1972) and 37 Fed. Reg. 10013 (May 18, 1972).

10. Supra, note 4.

11. A.R. Lucas, "Legal Techniques for Pollution Control: The Role of the Public", 6 University of British Columbia Law Review 167, 185 (1971).

12. Re Rockcliffe Park Realty II C.E.L.N. No.4, p.79 at 83, August 1973.

13. "Environmental Protection in Sweden," The Swedish Institute, June 1971, pp.2-3.

14. Suggested criteria as contained in Environment Canada Task Force Report on Environmental Impact Policy and Procedure, August 30, 1972, p.10. Yet unreleased.

15. S.O. 1971, c.47.

16. S.O. 1971, c.48.

17. Joseph Sax, Defending the Environment, New York (Random House), 1972, pp.152-153.

18. S.O. 1971 c.27 supp.

19. R.S.O. 1970 c.410.

20. R.S.O. 1970 c.284 s.216.

21. The Freedom of Information Act 5 U.S.C. 552. The preamble of the California Inspection of Public Records Act sets out the doctrine of public access to information as follows:

> ...the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Some of the more common provisions in state access to information laws include:

1. A statutory right of every citizen to inspect and copy public records.
2. The type of information which must be furnished (exemptions are also specified).
3. Procedures for obtaining information.
4. Statutory penalties for the public official who refuses information.
5. Enforcement by the courts of the right to access, under general legal principles.

22. Public Act No. 127 of 1970.

23. "Michigan's Environmental Protection Act of 1970: A Progress Report," 70 Michigan Law Review 1003, 1007 (1972).

APPENDIX A

from ENVIRONMENT CANADA TASK FORCE REPORT ON ENVIRONMENTAL IMPACT POLICY AND PROCEDURE, Chapter 3

Some Suggested Contents of an Assessment Document

The environmental impact assessment statement is a key document in the procedure, and is meant to contain:

(a) a description of the proposed action adequate to permit a careful assessment of the environmental impacts,

(b) a description of the environmental impact of the proposal including a discussion of any special construction or operational precautions intended to reduce potential impacts,

(c) a statement of any adverse unavoidable environmental effects which might develop including a discussion of their significance,

(d) an account of any irreversible or irretrievable commitments of resources, including a discussion of the extent to which the action curtails the range of beneficial uses of the environment,

(e) an explanation and objective evaluation of alternative actions to the proposal, including an analysis of their expected environmental impacts, and

(f) a statement on the relationship between local, short-run uses of the environment and the maintenance and enhancement of long-run productivity and utility of the environment.

These points follow the guidelines issued by the Council on Environmental Quality pursuant to the National Environmental Policy Act in the U.S.A.